

## Chapter VII: Public Interest Litigation and Other Recent Trends

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## Chapter VII

# PUBLIC INTEREST LITIGATION AND OTHER RECENT TRENDS

### 1. PUBLIC INTEREST LITIGATION IN INDIA: AN OVERVIEW

**(PIL) or Social Action Litigation** is a new remedy initiated by the judiciary to enable the persons to knock the doors of the Court on behalf of those who are either ignorant / have no access to the courts. The traditional rule of *locus standi* that a petition can only be filed by a person whose rights infringed has now been considerably relaxed by the Supreme Court in its recent rulings. The court now permits public interest litigations or social interest litigations at the instance of public spirited person who because of his poverty or socially or economically disadvantaged position is unable to approach the court for relief.

In *S.P. Gupta v. Union of India*,<sup>788</sup> the Supreme Court held that “where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction or

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<sup>788</sup> AIR 1982 SC 149.

writ.

In *Fertilizer Corporation Kamgar Union v. Union of India*<sup>789</sup> Justice V. R. Krishna Iyer has enumerated the following reasons for the liberalization of the strict rule of *locus standi*. (i) when corruption permeates the entire fabric of government, the state power may be exercised on grounds unrelated to its nominal purposes. In such a climate civil remedies for administrative wrong doing depend upon the action of individual citizens. (ii) social justice warrants liberal judicial review of administrative action until other control arrangements are made. (iii) restrictive rules of standing are antithesis to a healthy system of administrative law. If a plaintiff with a good case is turned away merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. (iv) in India, freedoms suffer from atrophy and ‘activism is essential for participative public justice’ and therefore, public minded citizen must be given opportunities to rely on legal process and not be repelled by narrow pedantic concept of *locus standi*.

Over the years the number of PILs filed in the courts have increased. Some of the areas in which the courts have dispensed justice by entertaining PILs includes; combating inhuman prison conditions,<sup>790</sup> horrors of bonded labour,<sup>791</sup> right to speedy trial, right to legal aid, right to livelihood, right against pollution, a right to be protected from industrial hazards,<sup>792</sup> the right to human dignity etc. A detailed description contribution of the Courts in expanding the concept of PIL is given as under:

**Public Accountability:** PIL facilitates judicial intervention to detect the malaise, prevent its spread and initiate remedial measures.<sup>793</sup> In *Pleasant stay Hotel case*<sup>794</sup> Palani Hills Conservation Council (PHCC) filed a PIL in the Madras High Court seeking a writ of mandamus to the state government to ensure that the hotel did not put up any illegal construction. Allowing the PIL, the High Court quashed the government order granting exemption to the hotel and issued order to demolish the portion of the building constructed in violation of the sanctioned plan. The Supreme Court on appeal

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<sup>789</sup> AIR 1981 SC 344.

<sup>790</sup> *Sheela Barse v. State of Maharashtra* AIR 1983 SC 1978.

<sup>791</sup> *Bandua Mukti Morcha v. Union of India* AIR 1984 SC 802.

<sup>792</sup> *Indian Council for Enviro-Legal Action v. UOI* 1995(2) SCALE 584.

<sup>793</sup> *All India Judges' Association v. Union of India* 1995(5) SCALE 634.

<sup>794</sup> *Pleasant Stay Hotely. Palani Hills Conversation Council & Others* (1995) 6 SCC 127.

upheld the judgment of the High Court.

**Out of turn allotments:** The central government's discretion in the allotment of retail outlets for petroleum products, LPG dealership and SKO dealership without any guidelines governing such discretion was challenged by *Centre for Public Interest Litigation v. Union of India*<sup>795</sup> in a public interest petition. The Supreme Court laid down various norms to determine all future allotments of dealerships under the discretionary quota on compassionate grounds.

**Environment:** The Supreme Court in catena of cases has played commendable role in protecting the environment thereby saving the people from environmental hazards. For example, in a PIL filed by the Indian Council for Enviro-Legal Action, the Supreme Court directed the state governments not to permit the setting-up of any industry or any construction up to 500 meters from the seawater at the maximum high tide. By a subsequent order, the court modified the direction and directed that none of the activities mentioned, as being prohibited under the CRZ notification would be permitted. It took note of an interim site visit report prepared in the ministry of Environment and called for an action-taken report thereon.<sup>796</sup>

The Supreme Court while entertaining a PIL in *S. Jagannathan v. Union of India*<sup>797</sup> directed the respective state governments to provide free access to the sea through the aquaculture units and also arrange to supply drinking water to the villages through tankers. The court further directed that no groundwater withdrawal for aquaculture purposes be permitted to any of the industries set up and no shrimp or aquaculture farm be permitted to be set up in the ecologically fragile areas of the coastline. The Collectors and Superintendents of Police were directed to ensure enforcement of the court's-orders.

In *Ajay Singh Rawat v. Union of India*<sup>798</sup> a PIL filed in the Supreme Court, to prevent polluting of a lake and surroundings in Nainital, a hill station, the court called for a report from an advocate. The court further directed that sewage water and horse dung had to be prevented from entering the lake and declared a ban on construction of multi-storied group housing and commercial complexes in the town area of Nainital. It

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<sup>795</sup> 1995 Supp (3) SCC 382.

<sup>796</sup> *Indian Council for Enviro-Legal Action v. UOI* 1995(2) SCALE 584

<sup>797</sup> 1995(3) SCALE 737

<sup>798</sup> 1995 (3) SCC 266

recommended constitution of a monitoring committee comprising public-minded persons for taking concrete steps.

The pollution caused to water and soil by the discharge of untreated effluents from the tanneries in Tamil Nadu formed the subject matter of a PIL in the Supreme Court by the *Vellore Citizens Welfare Forum*.<sup>799</sup> The Supreme Court directed the closure of the 162 tanneries and directed the district magistrate and superintendents to ensure compliance. The pollution control board was directed to carry out periodic inspections.

The Supreme Court in *Consumer Education and Research Centre v. Union of India*<sup>800</sup> a writ petition filed in public interest by CERC (Consumer Education and Research Centre), highlighting the occupational health hazards of workmen employed in the asbestos industry declared that the right to health and medical care to protect health while in service or post-retirement is a fundamental right of a worker under article 21 of the Constitution.

Given the abysmal record of governments in this area, PIL continues to remain an important avenue for environmentalists to pursue preventive and corrective measures.

**Custodial deaths:** Based on newspaper reports about the custodial death of a scheduled tribe youth, two writ petitions were entertained by the Orissa High Court.<sup>801</sup> On the same day the Orissa High Court dealt with another case of death in police custody. The High Court received a telegram from certain advocates in Sambalpur district that officers of Sambalpur police station beat a betel shop owner Bijay Kumar Choudhury to death. The telegram was treated as a writ petition and notices issued to the police.

**Prisoners:** An advocate, in a PIL challenged the method of execution of death sentence by hanging as prescribed under the Punjab Jail Manual as being inhuman and violative of the fundamental right to life under article 21 of the constitution. He further contended that the procedure under the manual requiring the body of the prisoner to be kept suspended for half an hour after it fell from the scaffold violated the right to dignity, which attached to a dead body too. The court while rejecting the first contention accepted the second and directed that the jail authorities should not keep the body of the

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<sup>799</sup> 1995 (5) SCALE 592

<sup>800</sup> 1995(3) SCC 42

<sup>801</sup> *Srikar Kumar Rath v. UOI* 1995(7) SCALE 7; *Bishnu Priya Bhoi v. state of Orissa* 80(1995) CLT 894

condemned prisoner suspended after the medical officer had declared the person dead.<sup>802</sup> Kuldeep Nayar, a renowned journalist and president of Citizens for Democracy, upon visiting a government hospital in Gauhati, Assam was shocked to find TADA detainees kept in one room handcuffed to the bed and tied to a long rope to restrict their movement. This in spite of the door being locked from outside and a posse of armed policemen guarding them. The letter sent by him to the court was treated as a petition and on examining the affidavit filed by the State of Assam, the court held that the handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in utter violation of human rights. The court declared that handcuffs or other fetters should not be forced on a prisoner while lodged in a jail or while in transport or transit from one jail to another or to the court and back. The authorities had to take permission of the magistrate for handcuffing the prisoner.<sup>803</sup>

**Judicial Accountability of Public Servants:** In *Saheli v. Commissioner of Police*,<sup>804</sup> the Supreme Court directed the Delhi administration to pay Rupees 75000 as damage to the parents of a child who died in police custody because of beating and assault by police officials. The Delhi administration was further directed to take appropriate steps to recover the amount / part thereof from the officers responsible for the incident. In *Sheela Barse v. State of Maharashtra*<sup>805</sup> wherein the Court entertained a PIL filed by a journalist alleging violence on a woman while in police lock up in the city of Bombay. In *Nilabati Behera v. State of Orissa*,<sup>806</sup> the Supreme Court in a case of custodial death considered a letter as a PIL and gave directions to the State of Orissa to pay Rupees 1,50,000 as compensation to the mother of a child who died in police custody.

**Extension of Fundamental Rights to Non-citizens:** The Supreme Court of India in *Chairman Rialway Board v. Chandrima Das*<sup>807</sup> wherein a woman of Bangladesh nationality was raped by some of the employees of the Railways in *Rail Yatri Niwas* in Calcutta, upheld the compensation of rupees 10 lakhs awarded by the Calcutta High Court. The Supreme Court while rejecting the argument that ‘relief under

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<sup>802</sup> *Parmanand Katara v. UOI* 1995(3) SCC 248

<sup>803</sup> *Citizens for democracy v. state of Assam* 1995(3) SCC 743

<sup>804</sup> AIR 1990 SC 1390

<sup>805</sup> *Sheela Barse v. State of Maharashtra* AIR 1983 SC 1978.

<sup>806</sup> AIR 1993 SC 610.

<sup>807</sup> (2000) 2 SCC 465.

public law could not be extended to foreign national’ ruled that ‘according to the tenor of language used in Article 21, it will be available not only to every “citizen” but also to every “person” who is not a citizen of this country.

#### **PIL in other matters:**

*Life Insurance Corporation of India v. C E R C, Ahmedabad*<sup>808</sup> a clause in a term policy of the LIC (Life Insurance Corporation) restricting its availability to persons employed in government or quasi-government organizations was struck down by the Gujarat High Court<sup>809</sup> as being arbitrary and discriminatory. The Supreme Court upheld this decision.

In *Common Cause v. Union of India*,<sup>810</sup> in a PIL the Supreme Court held that the strikes should be resorted by the lawyers only in the rarest of contingencies and as a last resort.

## **2. STATISTICAL DATA:**

### **Statement of number of PILs admitted and disposed of by various High Courts:**

Court	Admitted	
	1998	1999
Calcutta	54	102
Sikkim	20	11
Karnataka	651	510
Rajasthan	550	456 & 325 in 2000.
Andhra Pradesh	513	568 & 529 in 2000.

## **3. RECENT TRENDS**

In the recent times significant developments have taken place in the area of judicial reforms. To begin with the Constitution which guarantees several fundamental rights to the citizens, and also contains numerous directives to the state, has been

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<sup>808</sup> 1995(5) SCC 482

<sup>809</sup> *CERC v. LIC* 1995(1) GLH 3

elaborated by the Supreme Court. The Court has held that right to life and personal liberty as enshrined in Article 21 of the Constitution does not mean *mere animal existence but a life with human dignity*.<sup>811</sup> It further gave impetus to the directive principles of state policy by embarking upon a course of judicial activism in interpreting positively certain directive principles. This was necessitated due to the absence of any legislative effort by the state to implement these directives, which are important for all the citizens for leading a life with basic human dignity. In some of the most deserving areas such as right to education,<sup>812</sup> right to immediate medical aid in emergency accident cases,<sup>813</sup> right to health care<sup>814</sup> right to free legal aid,<sup>815</sup> where the judiciary in general and the Supreme Court in particular has given certain directives to the State by raising these rights to a higher pedestal. Most importantly the courts have considered letters<sup>816</sup> as a PIL and also extended the rights to life and personal liberty guaranteed under Article 21 of the Constitution to persons of foreign origin<sup>817</sup> while rendering justice to the poor and the needy.

The Bar Council of India the UGC are playing increasingly active role in the recent times in the sphere of legal education. The BCI is setting new standards to the law colleges imparting legal education and is taking action against the law colleges not adhering to the standards set by it. Further the BCI, which has banned the degrees obtained through correspondence education for enrolment has recently came out with the direction to all the colleges imparting part-time/evening law colleges to switch over to full time course from the academic year 2001-2002.

Significant developments are taking place to reform the procedural laws in the country. In 1999, new Bill<sup>818</sup> amending the Code was passed by the Parliament. The amendments to the Code, which are devised with the purpose of speeding up the tardy justice delivery system, which have not yet been implemented due to intense opposition

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<sup>810</sup> 1995(1) SCALE 6.

<sup>811</sup> *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

<sup>812</sup> *Mohini Jain v. State of Karnataka* AIR 1992 SC 1858, see also *Unnikrishnan v. State of A.P.* 1993 (1) SCC 645.

<sup>813</sup> *Pandit Parmananda Katara v. Union of India* AIR 1989 SC 2039.

<sup>814</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* AIR 1996 SC 2426.

<sup>815</sup> *M. H. Hoskot v. State of Maharashtra* AIR 1978 SC 1548.

<sup>816</sup> *Supra* note 19.

<sup>817</sup> *Supra* note 20.

<sup>818</sup> Act 46 of 1999, Bill No. 50 of 1999, which received the assent of the President of India on December 30, 1999.



to it from the lawyers. While the government feels that the amendments would benefit poor litigants, the lawyers hold the view that they would cause hardship to poor litigants.

Besides the legislature and executive are playing their part to make the concept of “Door delivery of justice” into a reality. The setting up of; plethora of tribunals and other commissions;<sup>819</sup> legal services authority at the national, state and district levels for providing free legal aid and advice; permanent *lok adalats* for the speedy disposal of cases; fast track courts for reducing the burden on courts etc., are steps in this direction. Quite apart from these to reduce the burden of judiciary in handling matters relating to administration the government has set up *lok adalats* in the offices of Mahanagar Telephone Nigam Limited, Electricity Boards, Insurance Authorities, Statutory Land Authorities such as Delhi Development Authority etc., for easy settlement of disputes on a day to day basis.

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<sup>819</sup> For a detailed description of the various tribunals and commissions functioning in the country see chapter vi.